

§ 1941.5 [Reserved]**§ 1941.6 Credit elsewhere.**

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103-354 guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA or its successor agency under Public Law 103-354.

(c) Property and interest in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

[43 FR 55883, Nov. 29, 1978, as amended at 68 FR 7697, Feb. 18, 2003]

§§ 1941.7-1941.10 [Reserved]**§ 1941.11 Applications.**

Applications will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in ex-

hibit M of subpart G of part 1940 of this chapter.

§ 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99-198), after December 23, 1985, if an individual or any member of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of this subpart and is available in any FmHA or its successor agency under Public Law 103-354 office, for the definition of "controlled substance") prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103-354 410-1, "Application for FmHA Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States, a United States non-citizen national, or a qualified alien under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Except for youth loans, have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms,

taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(5) Except for youth loans, be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed. In the case of a limited resource applicant see §1941.4 of this subpart.

(6)(i) Have not executed a promissory note for a direct OL loan in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of Indian tribe, and the test for credit requirement in §1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

(A) The applicant has a financially viable operation;

(B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

(7) *Transition rule.* An applicant is eligible for new direct OL loans for 3 additional years if as of April 4, 1996, the applicant, or anyone who will execute the promissory note, had direct OL loans closed in 4 or more separate years prior to the year in which the new direct OL loan is closed. The 4 previous years' direct OL loans, as well as the 3 additional years of new direct OL loans, may be in non-consecutive years.

(8) *Agency loss.* (i) Except as provided in paragraph (a)(8)(ii) of this section,

the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct OL loan to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

(9) Not be delinquent on any non-tax Federal debt or FSA guaranteed debt. This restriction will not apply if the Federal delinquency is cured on or before the loan closing date.

(b) *An entity must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(4) Consist of members who are individuals and not entities.

(5) If the members holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) The majority interest of the entity must be held by members who are citizens of the United States, United States non-citizen nationals, or qualified aliens under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) At least one member must operate the family farm.

(iv) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If the members holding a majority interest are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(7) If applying as a limited resource applicant, as defined in § 1941.4 of this subpart:

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met by the entity and all its members.

(ii) The entity and *all* the members must own *or* operate a small or family farm and at least one member must operate the farm.

(8) If each member's ownership interest does *not* exceed the family farm definition limits, their collective interests

can exceed the family farm definition limits only if:

(i) all of the members of the entity are related by blood or marriage,

(ii) all of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section.

(9)(i) Have no member of the entity who has executed a promissory note for direct OL loans closed in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and the test for credit requirement in § 1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

(A) The applicant has a financially viable operation;

(B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

(10) *Transition rule.* An applicant is eligible for new direct OL loans for 3 additional years if as of April 4, 1996, the applicant, or anyone who will execute the promissory note, had direct OL loans closed in 4 or more separate years prior to the year in which the new direct OL is closed. The 4 previous years' OL loans, as well as the 3 additional years of new direct OL loans, may be in non-consecutive years.

(11) *Agency loss.* (i) Except as provided in paragraph (b)(11)(ii) of this section, the applicant, and anyone who will execute the promissory note, has not

caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct OL loan to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

(12) Not be delinquent on any non-tax Federal debt or FSA guaranteed debt. This restriction will not apply if the Federal delinquency is cured on or before the loan closing date. This eligibility restriction applies to the entity and all of its members.

(c) *Borrower training.* Except for applicants for youth loans, all applicants must agree to meet the training requirements of §1924.74 of subpart B of part 1924 of this chapter unless a waiver is granted in accordance with that section. In the case of an entity, any individual member holding a majority interest in the operation or who is operating the farm must agree to complete the training or qualify for the waiver on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity

member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities. If the applicant has previously been required to obtain training, the applicant must be enrolled in and attending, or have satisfactorily completed, the training required.

[53 FR 35684, Sept. 14, 1988, as amended at 55 FR 21527, May 25, 1990; 56 FR 3971, Feb. 1, 1991; 58 FR 69199, Dec. 30, 1993; 62 FR 9354, Mar. 3, 1997; 62 FR 28618, May 27, 1997; 68 FR 7697, Feb. 18, 2003; 68 FR 62223, Nov. 3, 2003; 69 FR 5262, Feb. 4, 2004]

§ 1941.13 Rural youth.

If otherwise eligible, a rural youth who applies for an OL loan must be recommended by a project advisor such as a 4-H club advisor, vocational teacher, home economics teacher, county extension agent, or other organizational sponsor or advisor. In addition, a youth who has not reached the age of majority under State law must obtain a written recommendation from a parent or guardian. All recommendations will be filed with the application in the borrower's case file.

§§ 1941.14–1941.15 [Reserved]

§ 1941.16 Loan purposes.

An applicant who obtained a write-down under direct or guaranteed loan authorities is restricted to the purposes listed under paragraphs (c), (g), and (h) of this section. An applicant who qualifies for a Low-Documentation operating loan under §1910.4(c)(1)(iii)(A) of subpart A of part 1910 may use loan funds for all authorized loan purposes except paragraph (i) of this section. An applicant who qualifies for a Lo-Doc loan under §1910.4(c)(1)(iii)(B) 7 CFR may only use the loan funds for purposes listed under paragraphs (c) and (h) of this section.